



## An open letter to Morocco regarding its candidacy for membership of the Human Rights Council,

21 April 2021

### To the President of the Moroccan government,

We are civil society organizations defending human rights and contributing to the activities of the Human Rights Council (the Council) since its creation. We write to you regarding the candidacy of Morocco for membership of the Council during the period from 2023 to 2025. We seek to remind you of the need to introduce a number of legislative and structural reforms required by international human rights standards, in order to demonstrate your country's commitment to its human rights obligations and the mechanisms of the UN Human Rights Council, and support the credibility of its candidacy to the Council.

In issuing Resolution No. 60/251 establishing the Council, the General Assembly stated that Council members "shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership".

On this basis, we believe that Morocco, as a candidate for the Council's membership, should take a set of positive steps at the national level to better promote and protect human rights, in particular the rights to freedom of expression and freedom of assembly.

We also remind you of the importance of taking effective measures to address human rights violations, especially gross violations, and to commit to full cooperation with the Council and its mechanisms, in order to avoid compromising the legitimacy of the Council and its ability to promote human rights, their protection and to demand full cooperation by states with their mechanisms.

### Cooperation with Human Rights Council mechanisms

Morocco has agreed as part of its Universal Periodic Review (UPR) to take concrete steps to strengthen its cooperation with the special procedures of the UN, in particular those of the Human Rights Council,<sup>1</sup> and to continue constructive discussion with the special procedures mechanisms.

<sup>1</sup>Recommendation 144-23, Universal periodic report of Morocco 2017, third cycle.

However, the Special Rapporteur on the independence of judges and lawyers canceled his visit to the country in 2019 because he considered that the Government of Morocco did not guarantee his freedom of movement and freedom of inquiry, including the ability to freely determine places to visit<sup>2</sup>. Imposing visits to specific places on special rapporteurs goes against the requirement on states to guarantee their freedom of movement and their ability to carry out their investigations.

Furthermore, Morocco has not demonstrated any effort to engage further with other special procedures, and has not issued a standing invitation to Special Rapporteurs in full cooperation with the mechanisms.

**Recommendations :**

- Invite the Special Rapporteur on the Promotion and Protection of Freedom of Opinion and Expression to conduct a visit to Morocco,
- Agree to the visit request of the Special Rapporteur on the rights to freedom of peaceful assembly and association,
- Extend a standing invitation to all mandate holders under the special procedures of the Human Rights Council and allow them to move and investigate freely during their visits.

**Guaranteeing freedom of expression and information**

The right to freedom of expression and information is guaranteed by the International Covenant on Civil and Political Rights (ICCPR), to which Morocco is a party, and allows individuals and groups to participate in public affairs, to hold public authorities to account, as well as enabling the enjoyment of other human rights. Protection of this right is vital to ensure that journalists, human rights defenders, and political opposition can carry out their work freely.

Morocco has undertaken some legislative reforms in the field of freedom of expression, by issuing Law No. 90.13 establishing the National Press Council, and Law No. 89.13 on the statute for professional journalists, and Law No. 88.13 on the press and publishing. The National Press Council was established on 22 June 2018, with the aim of ensuring respect for the journalistic ethics stipulated in the Charter of Ethics for the Profession of Journalism published in the Official Gazette on 29 July 2019.

However, these reforms remain very limited in practice, due to the existence of other laws that are used to restrict freedom of expression. The Penal Code is one of the key pieces of legislation used to undermine freedom of expression, as it contains vaguely worded crimes that overlap with the crimes stipulated in the Press and Publication Law.

Article 17 of the Press and Publication Law states that “the provisions of other laws shall not be applied in any matter for which there is a clear provision in the Press and Publication Code.” However, omissions and a lack of clarity in some provisions of the Press and Publication Law mean that journalists are still vulnerable to prosecution under the Penal Code for the same actions. For example, four journalists were prosecuted in 2017 based on a law related to the Committees of Investigation, instead of applying the Press and Publication Law, because they have

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See: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MAIndex.aspx>

<sup>2</sup> See the press release of the special rapporteur on the independence of judges and lawyers.

<https://news.un.org/fr/story/2019/03/1039041>

(FR)

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24356&LangID=E> (ENG)

published news on regarding the work of a committee of investigation about the pension funds which was created by the second chamber of the parliament.

Moroccan authorities regularly use the penal code to harass human rights defenders carrying out their work to uncover, document, and report human rights violations.

For example:

- The case of journalist Omar Radi, who was detained by the Judicial Police and charged after he posted a tweet denouncing a judicial decision issued against a group of Hirak Al-Rif activists who were calling for the respect of human rights.

Morocco has failed to revise the Penal Code<sup>3</sup> to bring it into line with the ICCPR, despite its acceptance of UPR recommendations to this effect. Under Article 19 of the ICCPR, restrictions on freedom of expression must meet the three-part test of legality, meaning they are sufficiently clear so that individuals can adjust their conduct accordingly, as well as being in pursuit of a legitimate aim, and being necessary and proportionate to that aim. Criminal insult or defamation provisions fail to meet the proportionality requirement, and the UN Human Rights Committee has said that imprisonment is never an appropriate penalty for defamation and urged states to consider decriminalization.<sup>4</sup>

In addition to this, the multiplicity of vague legal texts applicable to the same expression precludes respect for the legality requirement.<sup>5</sup> Article 84(2) of the Press and Publication Law mandates a fine from 5,000 to 20,000 dirhams for similarly insulting<sup>6</sup> (by the same means)<sup>7</sup> state offices and institutions.<sup>8</sup> This allows for the imposition

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<sup>3</sup>Morocco has not fully implemented the following recommendations:

- No. 144-31 "Ensuring that criminal law is fully consistent with the International Covenant on Civil and Political Rights."

- No. 144-112 "Ensuring that the relevant provisions of the Code of Penal Procedure or the Criminal Code are brought into line with Morocco's obligations arising from the International Covenant on Civil and Political Rights, especially with regard to freedom of speech and opinion."

- No. 144-120 "(...) review the Criminal Code and eliminate restrictions on freedom of expression (...)."

Universal periodic report of Morocco 2017, third cycle.

See: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/MAIndex.aspx>

<sup>4</sup> General Comment 34.

<sup>5</sup>The Human Rights Committee has affirmed in the General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights that "for the purposes of paragraph 3, the rule that will be regarded as a law "must be drafted with sufficient precision in order for an individual to control his behavior according to it and must be made publicly available "The law may not give the persons responsible for its implementation absolute discretion in restricting freedom of expression." The law must provide sufficient directives for those charged with its implementation to enable them to properly verify the types of expression that are subject to restriction and those that are not subject to this restriction. " See paragraph 25:

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>6</sup>Article 83 of the Press and Publication Law defines insults as "every insulting or disgraceful expression or humiliating term that degrades dignity or defamation and does not include the proportion of any particular incident."

<sup>7</sup>The list of means of expression came in Article 72 of the Press and Publication Law, which is represented in "by any means, especially by speeches, shouting, or threats uttered in public places or meetings, or through written distributed or sold publications that are offered for sale or displayed in places or meetings, either through posters presented to the public, or through various audiovisual or electronic media and any other means used for this purpose as an electronic support.

<sup>8</sup>The list of entities and persons is described as "councils, judicial bodies, courts, land, sea, or air armies, founding or organized bodies, or public administrations in Morocco, or against a minister or several ministers for their duties or attributes, or against an employee or one of the men or officers of the authority or any person assigned to a temporary or continuous public interest or mission, judicial assistant, or witness as a result of the performance of his testimony.

of tighter or lesser penalties on the basis of subjective criteria, enabling authorities to use the Penal Code to more harshly punish journalists and activists.

During the COVID 19 pandemic, the government has also proposed a dangerous draft law on the use of social media platforms, which included several vague crimes and vague obligations on platforms. It also provided wide administrative powers to censor content published on the Internet and the possibility of removing it without a court ruling, which poses a threat to freedom of expression.<sup>9</sup>

**Recommendations :**

- Repeal articles of the Penal Code which contain duplicative crimes covered by the Press and Publication Law, in particular Articles 263, 265, and 266 of the Penal Code.
- Explicitly abolish prison penalties in all cases related to defamation and insult, particularly when it is addresses to politicians or members of legislative, executive and judiciary powers.
- Abandon the draft proposal for a new social media law.

**Guaranteeing freedom of association and peaceful assembly**

The legislative framework in Morocco related to freedom of association and peaceful assembly enables significant restrictions of this right, and suffers from a failure to keep pace with modern technological developments and best practices. In order to comply with its international human rights obligations, Morocco should repeal and replace legislation in this area, as the spirit of the laws is not in line with democratic values.

Currently, Law no 1.58.376 on association enables administrative authorities to arbitrarily restrict freedom of association. Article 5 of the law gives the administration wide discretion during the registration phase. The law gives broad discretion to authorities on what documents they may request for registration, enabling them to delay or permanently withhold registration by making arbitrary demands on associations to submit documents that are not stipulated in the law in order to be registered.

This has also enabled authorities to fail to issue the temporary registration documents while permanent documents are being applied for, which means that associations cannot legally function.

In this context, we note the restrictions that the Moroccan Commission for Human Rights suffers, as the authorities refused to deliver them their registration document after the renewal of its Board in 2019. The Moroccan Association for Human Rights also suffers from such restrictions, as the authorities have refused to receive the application of renewal for 52 branches, and refused to hand over the document of registration to 10 branches despite the authority's receipt of their application.

The administrative authorities also refuse to explain decisions to deny civil society requests for demonstrations, and often use disproportionate force during the dispersal of peaceful assemblies.

**Recommendations :**

- Repeal the Law no 1.58.377 on public assembly and Law no 1.58.376 on association, and replace them with a new legislation which promotes and protects this right.

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<sup>9</sup> For more details, see:

<https://www.menarights.org/en/articles/morocco-government-must-fully-withdraw-draft-law-social-media>

**ARTICLE 19**

We urge your government as a candidate to the UN Human Rights Council to commit to implement these recommendations, in order to demonstrate its commitment to the human rights standards the Council is tasked with promoting, and the mechanisms through which it seeks to do this.

Yours sincerely,

**ARTICLE 19**

**ADALA Association for a Fair Trial**

**Moroccan Organization for Human Rights**

**Moroccan Forum for Young Journalists**

**EuroMed Rights**

**Prometheus Institute for Democracy and Human Rights**

**Association of Citizenship Initiatives**

**Anwal Forum for Development and Citizenship**